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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 1046/2018 & CM No. 54958/2018**
AMIT KUMAR Appellant

Through: Mr. T.R. Kashyap, Advocate.

versus

KANIKA HAJIKA Respondent
Through: Mr. Abhishek Harjika, Advocate with
Respondent in person.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
% **31.12.2018**

SANJEEV NARULA, J.:

CM No. 54959/2018 (exemption)

1. Exemption allowed, subject to all just exceptions.

Cav No. 12224/2018

2. Since the Caveator has put in appearance, the Caveat stands discharged.

RFA 1046/2018 & CM No. 54958/2018

3. The present appeal has been filed by the Appellant-Defendant, assailing the preliminary decree and judgment dated 30th November, 2018 in the case bearing Suit No. 6032/2018 titled *Kanika Hajika v. Amit Kumar* whereby the learned Additional District Judge, Delhi has decreed the suit, on an

application filed by the Respondent-Plaintiff under Order 12 Rule 6 Code of Civil Procedure (hereinafter referred to as 'CPC') with respect to property bearing No. XV/2941, Gali No. 3, Ground Floor, situated in Chuna Mandi, Paharganj, New Delhi (hereinafter referred to as 'suit premises').

Factual Background

4. A lease deed dated 1st November, 2017 was executed between the Respondent/Plaintiff/landlord with the Appellant/Defendant/tenant with respect to the suit premises. The said deed was duly registered with the office of the Sub-Registrar, Asaf Ali Road, Delhi.

5. The monthly rent was fixed at Rs. 10,000/- per month for a period of 22 months commencing w.e.f. 1st November, 2017 until 31st August, 2019. The Appellant was permitted to use the suit premises for commercial purposes.

6. It would be apposite to note the relevant clauses of the lease deed reproduced hereunder:-

“Clause 1- That tenancy of the above said tenanted premises commencing w.e.f. 01-11-2017 and end of 31-8-2019, and the same will be valid for a limited period of 22 months.

Clause 2- That the Lessee will use the above said tenanted premises for the Commercial purpose.

Clause 4- That the Lessee shall pay the monthly lease amount to the Lessor upto 7th day of each month in advance as per English Calender.

Clause 8- That the Lessee will not sublet apart assign with the tenanted premises.

Clause 11- That if the Lessor wants to evict the above said tenanted premises before the expiry of tenancy period, from the Lessee, then the Lessor will serve one month notice to the tenant.

Clause 12- That if the Lessee will not pay Lease amount continuously to the Lessor, then the Lessor shall have right to evict the said Lessee from the tenanted premises without prejudice.

Clause 13- That if the Lessee will fail to vacate the aforesaid leased premises after expiry of lease period then the lessee will pay Rs. 5000/- (Rs. Five thousand only), per day, as a penalty till the date of handing over the possession of the said leased premises unto the lessor.

Clause 15- In case of any breach of any provision of this lease, the Lessor shall be entitled to terminate it with immediate effect.”

7. In terms of Clause 11 of the registered lease deed dated 18th November, 2017, in case the Respondent/landlord wanted to evict the Appellant/tenant from the tenanted premises prior to the expiry of the lease period, he was required to serve one month notice. Clause 12 stipulates that in case the Appellant/tenant defaulted in the payment of the lease rent, the landlord has the right to evict the tenant.

8. The Appellant flouted Clause 4 of the lease deed and failed to make the payment of the lease rent in advance within the time period stipulated i.e. 7th day of each calendar month in advance. Regular defaults occurred and resultantly the Appellant fell in arrears for the lease rent for the month of May to August, 2018.

9. The Appellant invoked Clause 11 of the lease deed and issued a notice dated 3rd July, 2018 giving one month's notice to the Defendant and terminated the lease deed. The said notice was duly served but there was no reply by the Appellant. Thereafter, the Respondent/landlord filed a suit seeking recovery of possession of the suit premises along with recovery of arrears of rent and *mesne* profits/damages.

10. In the written statement filed by the Appellant-Defendant, it was alleged that the suit had been filed on the basis of false and fabricated documents. The lease deed executed between the parties is not in consonance with actual understanding between the parties. The terms and conditions of the registered lease deed placed before the Sub-Registrar, have been modified/ altered without the consent of the Appellant. The clauses relating to term/tenure of the lease and payment of liquidated damages/*mesne* profits after the expiry or termination of the original terms were incorporated clandestinely and dishonestly without the knowledge of the Appellant. Two sets of lease deeds were got signed from the Appellant by Sh. S. Prakash, Advocate, who is stated to be a close friend of the counsel who witnessed the lease deed at the time of registration of the document. The contents of the lease deed were read over and explained to the Appellant and the same did not contain any condition pertaining to the time-line for handing over the possession of the suit premises. The Appellant signed the documents before the Sub-Registrar in good faith under the impression that both set of documents contained the same terms and conditions that were read over to him. He was shocked to learn from the contents of the lease deed filed along with the suit that the

terms had been amended and modified. Prior to expiry of the term of the lease, the Respondent could not terminate the lease deed without a valid ground. Appellant also stated that he intended to initiate appropriate action for challenging the lease deed.

11. After completion of pleadings, Respondent/landlord filed an application under Order 12 Rule 6 CPC and referred to the categorical admissions made by the Appellant in the written statement and sought a decree for recovery of possession in respect of the suit premises. The Appellant/tenant filed a reply to the said application and contested the same primarily on the ground that the application is untenable and misconceived as he has made no admission in the written statement. It has been further averred in the reply that Appellant has challenged the lease deed dated 18th November, 2017 on the ground of fraud and therefore, the application seeking judgment on admission is not maintainable. The grounds taken in the written statement for contesting the suit were also reiterated and relied upon in the application.

12. The learned Trial Court has passed a preliminary decree under Order 12 Rule 6 CPC with respect to relief of possession.

Findings of the Trial Court

13. The findings of the learned Trial Court in the impugned judgment are as under:-

“11.It is not disputed that defendant was inducted as a tenant on 01.11.2017. The terms and conditions of lease deed dated 18.11.2017 are denied except the rate of rent. Clause 1, 11, 13 & 15 are a result of conspiracy and fraud

played upon the defendant. It is denied that any such notice of termination of lease deed was served upon the defendant or that the defendant is liable to pay Rs.5000/- per day as penalty after the termination of tenancy. Defendant is not bound by the terms and conditions of the lease deed. It is submitted that the bar of Section 92 & 93 of the Evidence Act will not come into play when the document relied upon by the plaintiff is a fraudulent document. It is submitted that it is equally well settled that registration of a document does not lead to the conclusion that it was duly executed.

12. As against this, counsel for plaintiff has made arguments in rebuttal. He has submitted that as per Clause 11 of the lease deed on page 47 of the Court file, relationship of landlord and tenant is not disputed. Rent of Rs.10,000/- per month is not in dispute. It was a 22 months old lease deed. Notice of termination of lease deed was served by the plaintiff upon defendant no.1 on all the available addresses of the defendant. Receipt of India post of service of lease termination notice was served on 04.07.2018. Section 65 B certificate of tracking report for authenticity of same has also been filed. There is no lease deed on record.

13. I have heard arguments from both the sides and perused the entire record. Defendant was inducted as tenant. Of that, there is no dispute. Admittedly, rate of rent is Rs.10,000/- per month which takes the case of both the plaintiff and defendant beyond the purview of Delhi Rent Control Act. Plaintiff has served legal notice of lease termination upon all three addresses of the defendant mentioned in the memo of parties. Defendant has not denied that all the three addresses belong to the defendant. There is a presumption under Section 27 of General Clauses Act, which is as under:-

27. Meaning of service by post- Where any [Central Act] or Regulation made after the commencement of this Act

authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

14. In order to obtain a preliminary decree of recovery of possession and recovery of arrears of rent from the defendant, plaintiff has proved the following three conditions: 1. That there is a relationship of landlord and tenant between both the parties. 2. That the rate of rent is more than Rs.3500/- per month. 3. That the landlord has terminated the lease deed by giving a notice to the tenant defendant.

15. All three conditions have been fulfilled in the present case. In view of the same, it is held that the plaintiff is entitled to a preliminary decree of recovery of possession alongwith recovery of arrears of rent, if any, since the day defendant has defaulted in payment of rent. In case, the recovery of rent is disputed, the same shall be decided at the stage of final arguments but in the meantime, plaintiff shall still be entitled to preliminary decree of recovery of possession of the suit property from the tenant. Application is disposed off accordingly.”

Submissions of the parties

14. The Court has heard the learned counsels for the parties.

15. The Appellant assails the impugned judgment essentially on the ground that the learned Trial Court has misconstrued Order 12 Rule 6 CPC, inasmuch as the pleadings before the Court did not disclose any clear, unequivocal,

unambiguous admission on the part of the Appellant. Since there are disputed questions of fact, the learned Trial Court was required to permit the parties to lead evidence and could not have decreed the suit for recovery of possession in a casual manner.

16. Learned counsel for the Appellant further argued that the learned Trial Court has ignored the fact that the lease deed dated 18th November, 2017 has been challenged and the Clauses relating to termination of the lease deed that were fraudulently incorporated could not be relied upon, for deciding the application under Order 12 Rule 6 of CPC. The term/tenure of the lease deed was agreed to be 22 months and therefore there was no justification for the learned Trial Court to pass a preliminary decree prior to the expiry of the aforesaid term. The learned Trial Court has failed to appreciate that by allowing the application, Appellant would be held to be an unauthorised occupant and thus by necessary implication he would be liable to pay penalty as provided in the lease deed. He further urged that the learned Trial Court has erred by overlooking the fact that there was no violation of any express terms of the lease deed except for a mere allegation made by the Respondent regarding non-payment/late payment of rent. The reason cited by the Respondent/landlord to terminate the lease was disputed and the same required parties to lead evidence and hence the Learned Trial Court was not justified in permitting the termination of the lease deed prior to the expiry of 22 months.

Findings

17. The scope of the present appeal concerns the object of Order 12 Rule 6

CPC and as to whether the said provision could be resorted to by the Respondent in the facts of the present case. In a suit for recovery of possession and *mesne* profits, the Court's power under Order 12 Rule 6 CPC, 1908 has been the subject matter of several decisions of this Court as well as the Supreme Court. It is no longer *res integra* that in such a suit, the basic object of the Rule has to be kept in mind. The object has been lucidly explained by the Supreme Court in the case of ***Uttam Singh Duggal & Co. Ltd. v Union Bank of India & Ors, (2000)7 SCC 120*** in the following words:-

“The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed.”

18. Keeping the aforesaid object in mind, in a suit for recovery of possession of a property from a tenant, whose tenancy is not protected under the provisions of Rent Control Act, all that the Court is required to do is to discern whether there is an existence of relationship of landlord and tenant between the parties; and whether the tenancy has lapsed/ expired by efflux of time or terminated by service of notice under Section 106 of the Transfer of Property Act. If the aforesaid ingredients are not in dispute, the Court may in the facts of the case proceed to pass a decree in terms of Order 12 Rule 6 CPC.

19. In the present case, the learned Trial Court has noticed that the above

aspects are indisputably established. The relationship between the parties concededly is that of landlord-tenant/lessor-lessee. The rate of rent is also admittedly more than Rs. 3,500/- per month. The lease agreement/lease arrangement between the parties has been terminated by issuance of a notice by the Respondent/landlord to the Appellant under Section 106 of the Transfer of Property Act. Thus, the learned Trial Court is completely justified in passing the preliminary decree for recovery of possession. The question as to whether there was an unequivocal and clear admission on the above aspects is apparent from the averments made in the written statement:-

(a) The Appellant in the written statement has categorically admitted that he has been inducted as a tenant in the suit premises in the following averments:-

“The plaintiff demanded a sum of Rs. 2 Lacs as an interest free security and a monthly rent of Rs. 10,000/- pm from the defendant for inducting him as a tenant in respect of the suit shop viz. bearing number XV/2941, Gali No. 3, Ground Floor, at Chuna Mandi, Paharganj, New Delhi- 110055 to which the defendant was agreeable. The rent was agreed to be revised after five years with the mutual consent of the parties.”

(b) Besides, the Appellant also made a statement before the Court on 12th September, 2018 in the following terms:-

“I am the Defendant in the present case. I state that I have been inducted as a tenant in respect of the suit shop i.e. shop bearing No.-XV/2941, Gali No. 3, Ground Floor, situated at Chuna Mandi, Paharganj, Delhi-55 vide registered a lease deed dated 18/11/2017. I am running my business of laminate, sheets and plywood etc from the demised shop. I state that I will not create any third party interest/part with possession/sub-let or damage the

said shop during the pendency of the present suit.”

20. From the above, it clearly emerges that Appellant admits himself to be the tenant in the suit premises and thereby accepts the relationship between him and the Respondent to be that of landlord –tenant. The Appellant also admits that the monthly rent of the suit premises is Rs. 10,000/- per month. Admission to this effect has been made in the written statement in the following terms:-

“The plaintiff demanded a sum of Rs. 2 lacs as an interest free security and a monthly rent of Rs. 10,000/- pm from the defendant for inducing him as a tenant in respect of the suit shop vz. Bearing number XV/2941, Gali No. 3, Ground Floor, at Chuna Mandi, Paharganj, New Delhi- 110055.”

21. Although, the Appellant disputes the terms and conditions of the registered lease deed on the ground that the same does not reflect the actual understanding between the parties, yet rate of rent is admitted. The admitted rate of rent being Rs. 10,000/- per month brings the relationship between the parties within the ambit of the Transfer of Property Act and the Appellant is not entitled to the protection under the Delhi Rent Control Act.

22. On the question of termination of the lease deed, it is to be noticed that Respondent/landlord issued a notice dated 3rd July, 2018 terminating the tenancy by giving him one month’s notice in terms of the lease deed. The said notice was dispatched through speed post as well as registered Post. The notices were duly served on the Appellant. Though, Appellant in the written statement denies the receipt of the notice, however, such denial has

been rightly ignored by the Trial Court by referring to the original speed post/registered AD and the tracking reports and further by relying upon Section 27 of the General Clauses Act. In view of the records placed by the Respondent/Plaintiff before the Trial Court and in light of the fact that the notice was dispatched to the Appellant/Defendant's correct address, through registered post, the denial in respect of the said notice by the Appellant has no value. The rebuttal in this case, does not go beyond a bald denial of service of the notice, which does not displace the onus to rebut the presumption of service. Without prejudice to the contention that the notice was duly served upon the Appellant, in view of the various decisions by the Apex Court and this Court, there is no requirement of service of notice and filing of the suit itself by the landlord can be taken as a notice to quit communicating the intention of the landlord to terminate the tenancy of the tenant. In this regard the Apex Court in the case of *Nopany Investments (Pvt.) Ltd v. Santokh Singh (HUF)* reported at (2008) 2 SCC 728 has held as under:

"12. In the present case, after serving a notice under Section 6A read with Section 8 of the Act, the protection of the tenant under the Act automatically ceased to exist as the rent of the tenanted premises exceeded Rs. 3500/- and the bar of Section 3(c) came into play. At the risk of repetition, since, in the present case, the increase of rent by 10% on the rent agreed upon between the appellant and the respondent brought the suit premises out of the purview of the Act in view of Section 3(c) of the Act, it was not necessary to take leave of the rent controller and the suit, as noted herein above, could be filed by the landlord under the general law. The landlord was only required to serve a notice on the tenant expressing his intention to make such increase. When the eviction petition was pending before the Additional Rent Controller and the

order passed by him under Section 15 of the Act directing the appellant to deposit rent at the rate of Rs. 3500/- was also subsisting, the notice dated 9th of January, 1992 was sent by the respondent to the appellant intimating him that he wished to increase the rent by 10 percent. Subsequent to this notice, another notice dated 31st of March, 1992 was sent by the respondent intimating the appellant that by virtue of the notice dated 9th of January, 1992 and in view of Section 6A of the Act, the rent stood enhanced by 10 percent i.e. from Rs. 3500/- to Rs. 3850/-. It is an admitted position that the tenancy of the appellant was terminated by a further notice dated 16/17th of July, 1992. Subsequent to this, the eviction petition No. 432 of 1984 was withdrawn by the respondent on 20th of August, 1992 and the suit for eviction, out of which the present appeal has arisen, was filed on 6th of February, 1993. That being the factual position, it cannot at all be said that the suit could not be filed without the leave of the Additional Rent Controller when, admittedly, at the time of filing of the said suit, the eviction petition before the Additional Rent Controller had already been withdrawn nor can it be said that the notice of increase of rent and termination of tenancy could not be given simultaneously, when, in fact, the notice dated 16/17th of July, 1992 was also a notice to quit and the notice intending increase of rent in terms of Section 6A of the Act was earlier in date than the notice dated 16/17th of July, 1992. In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this court in *V. Dhanapal Chettiar v. Yesodai Ammal* [1980]1SCR334"

23. It is well known that in case where the rent is more than Rs. 3,500/- per month, and landlord-tenant relationship is not disputed, the only other

defence available is non-receipt of legal notice. This seems to be the precise reason for the Appellant to deny the receipt of notices. Having regard to the law laid down by the Apex Court and the conduct of the Appellant, there is no infirmity in the finding of the learned Trial Court on this aspect.

24. The challenge to the terms of the lease deed on the ground of fraud would also have no impact of outcome on the decision rendered on the application under Order 12 Rule 6. Nevertheless the court has also considered merits of this challenge for the reason that the specious plea raised by the Appellant is completely dishonest and deserves to be dealt with, with imposition of cost. The relationship between the parties, as noticed above, arises out of a registered document. The Appellant does not dispute the fact that for the purpose of registration he visited the office of the Sub-Registrar. However, the Appellant raised a disingenuous plea that he was made to sign on two sets of documents and that the original lease deed registered before the Sub-Registrar does not contain the true and correct understanding between the parties. Such a plea is not only bereft of merits but is also *prima facie* false and baseless. There is no other document or any material whatsoever shown to the Court that could in any way indicate that the defence raised by the Appellant is *bona fide* and genuine. Allowing the tenant to take such a plea and dispute the registered document would, in fact, impinge upon the sanctity attached to the registered documents and to the process of registration. The registered document bears the signatures of the Appellant on each and every page. It also bears the finger prints of the Appellant at the relevant places. There is a presumption that a registered document is validly executed. The onus of proof of rebuttal to such a presumption lies on the

person who disputes the same. In the instant case, Appellant initially took a stand that he would be exercising her legal remedy to challenge the document and thereafter purportedly filed the suit. This does not, in any manner, discharge the onus, to rebut the presumption regarding the genuineness of the execution of the document. As on date, the document is valid in law. The term of the lease is 22 months, however, the same can be terminated in terms of the Clauses. The parties have, with open eyes, agreed to incorporate the Clauses which gives the right to landlord to terminate the lease prior to its expiry by issuance of one month's notice. The Appellant was defaulting in making the payment of rent. The Clause, in fact, does not require any reason to be satisfied for the Respondent/landlord to exercise this right for terminating the lease, however, in the present case, there is default on the part of the Appellant in payment of the lease rentals. The Appellant faced with an unambiguous and unequivocal Clause permitting the Respondents to terminate the tenancy prior to expiry of the term by serving a month's notice, has tried to escape the consequence by filing a suit challenging the lease deed. This appears to be done with the objective to retain the possession of the suit premises notwithstanding the contractual Clause that gives a unilateral right to the Respondent to terminate the lease without specifying the cause. Allowing the Appellant to raise a plea contrary to the agreed terms of the Contract, would amount to re-writing the Contract for the parties. At most, a successful challenge to the lease deed on the ground of fraud would perhaps render it voidable. In that event, the relationship between the parties would to be that of a month to month tenancy. Such a relationship is also determinable by issuing of a notice under Section 106 of the terms of the Transfer of Property Act.

25. In my considered view all the requirements of Order 12 Rule 6 CPC are satisfied, as far as the factum of the landlord and tenant relationship; and the factum of amount of rent being above Rs. 3,500/- both are indisputably admitted by the Appellant and in view of the documents placed on record by the Respondent/Plaintiff, the denial of service of notice is a sham and false denial. Therefore, the pleas raised by the Appellant are completely bereft of merits.

26. The appeal is dismissed with imposition of cost of Rs. 25,000/-.

DECEMBER 31, 2018

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SANJEEV NARULA, J